Crl. Misc. No.27054-M of 2007

Present: Mr. Ramesh Goyal Advocate,
for the petitioners.

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Notice of motion for 15.05.2007.

On the asking of the Court, Mr. Narender Sura, A.A.G.,Haryana accepts notice on behalf of respondents No.1 and 2.

Learned counsel for the petitioners has submitted that the petitioners face imminent danger to their life from respondent No.3 who is father of petitioner No.1. It is submitted that he made an abortive attempt this morning also to take away to petitioner No.1 from the Court premises. Both the petitioners are present in Court and have been identified by the Counsel.

In view of the above, the Superintendent of Police, Kurukshetra (Respondent No.1) and S.H.O., Police Station Sadar, Kurukshetra (Respondent No.2) shall take steps to ensure that the petitioners are not harmed.

Copy of the order be given dasti to the State counsel for compliance.

April 30, 2007 **(S.S.SARON)**
nt **JUDGE**

Crl. Misc. No. 26981-M of 2007

Present: Mr. G.S.Goraya, Advocate,
for the petitioners.

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Learned counsel for the petitioners submits that petitioners are the mother-in-law and father-in-law respectively of the complainant (respondent No.2). It is submitted that the impugned F.I.R. Dated 24.03.2006 (Annexure P-1) has been registered eight years after the solemnization of the marriage between son of the petitioner and the complainant. The marriage was solemnized on 29.01.1998. The petitioner No.2 is stated to be retired Commandant from 6th reserved battalion C.I.S.F. Madras. It is contended even from the reading of the F.I.R., the allegations do not constitute any offence in so far as the petitioners are concerned.

Notice of motion to Advocate General, Haryana and respondent No.2 for 09.08.2007.

In the meantime, further proceedings qua the petitioners before the trial Court shall be stayed.

April 30, 2007 **(S.S.SARON)**
nt **JUDGE**

Crl. Misc. No. 5796-M of 2007

Present: None for the petitioner.
Mr. Narender Sura, A.A.G.,Haryana.

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Learned counsel for the State submits that only Vijay Pal who is the injured remains to be examined in the case and the case is fixed for his evidence on 01.05.2007 i.e. tomorrow and after recording the statement, the prosecution evidence would be closed.

In the circumstances, no ground for bail is made out at this stage.

Dismissed.

April 30, 2007 **(S.S.SARON)**
nt **JUDGE**

Crl. Misc. No.9252-M of 2007

Present: Mr. G.S.Bhatia Advocate,
for the petitioner.
Mr. I.P.S.Sidhu, DAG, Punjab.

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Learned counsel for the State submits that statement of Sunil Kumar before whom Gurpreet Singh @ Gopi made extra judicial confession has not been examined before the trial Court and the case is fixed for 01.05.2007 for remaining evidence of the prosecution.

Adjourned to 05.07.2007.

April 30, 2007 **(S.S.SARON)**
nt **JUDGE**

Crl. Misc. No.16633-M of 2007

Present: Mr. Amit Mehta, Advocate,
for the petitioner.

Mr. I.P.S.Sidhu, DAG, Punjab.

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Heard counsel for the parties.

The petitioner is accused for the offence under Sections 376, 120-B, 506 IPC. The allegations in the FIR, which are recorded on the statement of the prosecutrix -complainant are that Monu @ Mota , son of the petitioner had committed rape on the pretext of marrying her. He had been doing this for the last two months from the date of the occurrence. Thereafter the complainant disclosed this matter to her mother Kulwant Kaur who approached the Sarpanch and informed about this state of affairs to him. The Sarpanch informed the petitioner about this on which she said that if the complainant and her son got married , she will die before the Panchayat.

The question as regard the role of the petitioner and the act of her son in committing rape would be considered by the Court during trial. The petitioner is in custody since 26.12.2006 and she is alleged to have said that if the marriage was solemnized she would die before the Panchayat. In the circumstances, no useful purpose would be served to keep her in further custody.

Accordingly, the petitioner on her furnishing personal bond and surety to the satisfaction of learned Chief Judicial Magistrate, Ludhiana, shall be admitted to bail. Criminal Misc. petition stands allowed accordingly.

April 30, 2007 **(S.S.SARON)**
nt **JUDGE**

Crl. Misc. No. 16674-M of 2007

Present: Mr. G.S.Punia, Advocate, and
Mr. A.S.Sullar, Advocate,
for the petitioner.

Mr. I.P.S.Sidhu, DAG, Punjab.

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Heard learned counsel for the parties.

The F.I.R. in the case has been recorded on the statement of the complainant (prosecutrix). According to her, she was residing with her father's sister (Bua) Surjit Kaur for the last 8 years and was searching for a job. She received a telephonic call from Gurdeep Singh (non-applicant) who asked her whether she requires a job. She was asked to reach Gurudwara Nanaksar Ferozepur Road Ludhiana on Friday at 1.00 PM. Gurdeep Singh stated that he would go along with her. The complainant reached Gurudwara Nanaksar and Gurdeep Singh (non-applicant) introduced himself and asked her to sit in the green colour jeep that he had got. She went along with Gurdeep Singh to Kothi No.120, Sunil Park, Ludhiana. She was taken inside the room and was introduced to a young man who disclosed his name as Gurjot Singh (Petitioner). Gurdeep Singh informed the complainant that Gurjot Singh does business of travel agency and transport . While the complainant was talking to Gurjot Singh then Gurdeep Singh came from behind and kept his hand on her mouth and the prosecutrix was forcibly undressed. Thereafter, it is alleged that the petitioner committed rape upon her and thereafter Gurdeep Singh also raped her. They then went to the bathroom and the complainant saved herself by running from there after wearing her clothes. During investigation, the petitioner was found innocent and in the charge report (challan) he was kept in column no.2 . The case was committed to the Court of Sessions. The learned Additional Sessions Judge on careful perusal of the complaint found that the petitioner who undressed the complainant was also liable. Accordingly, he has also been charged vide

order dated 07.02.2007. On the same date i.e. 07.02.2007 his application for bail has been dismissed. A perusal of the order dated 07.02.2007 whereby bail has been declined to the petitioner would show that the learned Additional Sessions Judge has placed reliance on the case of Kishun Singh and Ors vs. State of Bihar, 1993(1) RCR, 647(SC) and Joginder Singh vs. State of Punjab, 1996(3) RCR, 280(P&H). It was held that there is sufficient evidence on record showing the involvement of the petitioner in the commission of crime of rape on the prosecutrix.

It is admitted position on record that the statement of any of the witnesses in the case has not been recorded so far. In Ranjit Singh vs. State of Punjab, 1998(4) RCR (Criminal) 552 (SC), it was held by the Supreme Court that the Sessions Judge has power under Section 319 Cr. P.C. to add new accused to face trial. However, the Sessions Judge can do so after collecting evidence. Of course, it is not necessary to wait till the entire evidence is collected. It was further observed that where, however, material placed by Investigating Agency shows positive involvement of the accused, but the accused was not arrayed due to omission, the Sessions Judge is required to send a report to High Court and High Court in exercise of inherent/revisional power would direct the committing Magistrate to rectify the committal order. Therefore, the Sessions Judge though has the power to add a new accused but that can be done after collecting on in other words recording some evidence and not before that. Kishun Singh's case (supra) on which reliance has been placed by the learned Additional Sessions Judge, was overruled.

In Lok Ram vs. Nihal Singh, 2006(2) RCR (Criminal) 707 (SC), it was held by the Supreme Court that on a careful reading of Section 319 Cr. P.C. as well as earlier decisions in the case of Joginder Singh and another vs. State of Punjab and another, AIR 1979 SC 339 and Municipal Corporation of Delhi vs. Ram Kishan Rohtagi and Ors., 1983(1) RCR

(Criminal), 73, it becomes clear that the trial Court has undoubted jurisdiction to add any person not being the accused before it to face the trial along with other accused persons, if the court is satisfied at any stage of the proceeding on the evidence adduced that the persons who have not been arrayed as accused should face the trial. Therefore, the trial Court only after adducing, collecting or recording some evidence that the person not sent up for trial can be added as an accused in the exercise of power under Section 319 Cr.P.C. In the present case, the learned Additional Sessions Judge while declining bail to the petitioner has referred to an overruled judgment. Besides, without collecting any evidence has added the petitioner as an accused. The petitioner had been found innocent in the police investigation and was kept in column No.2.

In the circumstances, the petitioner on his furnishing personal bond and surety to the satisfaction of learned Chief Judicial Magistrate, Ludhiana, shall be admitted on bail. However, nothing stated herein shall be taken as an expression on the merit of the case so as to preclude the summoning of the petitioner as an additional accused if during the course of trial some evidence or material comes against the petitioner. In case after collection of evidence, the summoning of the accused is considered necessary, the same shall be considered and disposed of by the learned trial Court independently and in accordance with law and uninfluenced by any observations made herein.

April 30, 2007 **(S.S.SARON)**
nt **JUDGE**

Crl. Misc. No.27041-M of 2007

Present: Mr. Arun Takhi, Advocate,
for the petitioner.

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This petition has been filed under Section 482 Cr.P.C. for issuance of direction to Respondents No.2 to 4 to act in accordance with law and not to cause un-necessary harassment to the petitioner at the instance of respondents No. 5 to 9. A further direction is sought against respondents No.2 to 4 not to interfere and stop the petitioner from harvesting the crops from his field at the instance of respondents Nos. 5 to 9 without due course of law.

The petitioner has filed this petition on the allegation that respondents No. 5 to 9 without any right , title or interest and without being in possession of the land in question, are harassing him. It is stated that Om Parkash, real brother of the petitioner in the capacity of General Power of Attorney holder of his father Baldev Ram ,entered into an agreement dated 13.07.2001 to sell the land of Baldev Ram measuring 29 Kanals 10 Marlas to the petitioner. The total price of the land was Rs. 5,50,000/-. It is stated that Rs. 1,00,000/ was paid in cash and Rs.1,50,000/- by way of Bank Draft on 23.07.2001. The balance amount was to be paid at the time of execution of the sale deed dated 31.12.2001.

Learned counsel for the petitioner submits that the petitioner is in possession of the property, which is evident from the Khasra Girdwari (Annexure P-1). It is submitted that a new Government has been formed in the State and respondents No.6 to 9 belong to the party which has formed the Government. It is alleged that respondent No.4 on instructions and directions of respondent No.5 came to the land in question on 14.04.2007 and directed him and his family members not to harvest the crops.

Learned counsel for the petitioner submits that he informed respondent No.4 that since he is in possession and Khasra Girdwari was also in his favour, he has every right to harvest the crop. When the petitioner and his family members started harvesting the crop on 22.04.2007 then respondents No.3 and 4 along with other officials came to the land in question and stopped the petitioner from harvesting the crop. They threatened the petitioner and his family members that in case he tried to harvest the crop, then the petitioner and his family members shall be implicated in a false case. The respondents No.3 and 4 informed the petitioner that the Khasra Girdwari has no value. Thereafter, it is stated that the petitioner approached the S.S.P.,Batala on 25.04.2007 (Annexure P-2) but no action has been taken.

After giving my thoughtful consideration to the matter it may be noticed that the dispute in the present case is of a civil nature which requires the appreciation of documents, the agreement dated 13.07.2001 and also other material including the revenue records. This Court in exercise of its jurisdiction under Section 482 Cr.P.C. is not to hold an enquiry with respect to a dispute of a Civil nature or go into veracity of facts on the basis of the averments contained in the petition . Even a perusal of the representation (Annexure P-2) shows that it does not bare any initial, signatures or diary number of receipt of the representation. Indeed in case such a representation has been made it was expected that it was either sent by registered post or diary number of its receipt was obtained. The petitioner during the course of hearing has submitted that civil suit is already pending between the parties. Therefore, it would be more appropriate if the petitioner seeks his remedies in the pending civil suit and not by resort to proceeding under Section 482 Cr.P.C.

Keeping in view the above observation, the present petition is devoid of merit and is accordingly dismissed. However, nothing observed herein shall in any manner affect the merits of the Civil Suit pending between the parties.

April 30, 2007 **(S.S.SARON)**
nt **JUDGE**

Crl. Misc. No.

Present: Mr. Advocate,
for the petitioners.

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April 30, 2007 **(S.S.SARON)**
nt **JUDGE**

Crl. Misc. No.

Present: Mr. Advocate,
for the petitioners.

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April 30, 2007 **(S.S.SARON)**
nt **JUDGE**